

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Workplace Safety and Industrial Relations)

Workers Compensation (Cross-border Workers) Amendment Bill 2014

A Bill for

An Act to amend the *Workers Compensation Act 1951*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2014-273

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Workers Compensation (Cross-border Workers)*
3 *Amendment Act 2014*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the *Workers Compensation Act 1951*.

10 **4 Employment connection test**
11 **Section 36B (6), new examples**

12 *insert*

13 **Example—worker usually works in a single jurisdiction**

14 Emma is employed as an electrical trades assistant with a NSW-based employer.
15 Emma performs all of her employment duties on worksites in the ACT, taking her
16 own vehicle to work and providing her own tools and equipment. Emma does not
17 attend her employer's premises in NSW in the course of her day-to-day duties and
18 receives all of her instructions from the relevant project manager on sites in the
19 ACT.

20 For s (3) (a), Emma usually performs work for her employer in the ACT and her
21 Territory or State of connection is the ACT.

Example—worker usually works in more than one jurisdiction

An employer carries on business as an interstate bus operator from premises in the ACT. Ray is engaged by the employer as a bus driver, mainly driving buses between Canberra and Sydney, NSW, but also driving buses between Canberra and Melbourne, VIC. Occasionally Ray drives charter buses entirely within the ACT for the employer.

For s (3) (a), Ray usually works in the ACT, NSW and VIC. As s (3) (a) does not decide Ray's Territory or State of connection, s (3) (b) needs to be considered.

Note An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

5 New section 36B (6A) and (6B)

insert

(6A) In deciding whether a worker is usually based in a Territory or State regard must be had to the following:

- (a) if the employer provides a place from which the worker is expected to operate—that place;
- (b) if a place is stated in the worker's contract of employment with the employer—that place;
- (c) the place from which the worker routinely receives day-to-day instructions from the employer;
- (d) the place where the worker attends to collect material for the purposes of their employment;

1 (e) the place where the worker reports for administrative, human
2 resource and other issues related to the workers' employment
3 with the employer.

4 **Example—worker usually based in a single jurisdiction**

5 Jenny is a sales representative for XYZ. Each morning Jenny is required to attend
6 a warehouse in NSW to collect her employer's products, which she is then
7 required to distribute to various retail outlets in NSW and the ACT. Jenny uses a
8 vehicle supplied by her employer, which she garages at her home in NSW. At the
9 end of each day Jenny is required to return any unsold merchandise to the
10 warehouse in NSW.

11 Jenny works without day-to-day supervision. Jenny's immediate manager is
12 located in XYZ's ACT office and is the person to whom she is required to send
13 reports and time sheets and to whom she reports verbally by telephone from time
14 to time.

15 Jenny sends all written correspondence to her manager via a facsimile located at
16 her home in NSW. All invoice books which Jenny needs to carry out her duties
17 are mailed to her home in NSW from where she prepared all documentation
18 related to her employment.

19 For s (3) (b), Jenny is usually based in NSW for the purposes of her employment
20 with XYZ. The employer's NSW warehouse is the place provided by XYZ that
21 Jenny is expected to operate from.

22 **Example—worker is usually based in more than one jurisdiction**

23 Paul is employed by an interstate trucking company that transports textiles across
24 Australia. Paul is supplied with a truck for the purposes of his employment and is
25 permitted to garage it at his home in the ACT while not in use.

26 Paul transports goods between the ACT, NSW and QLD. His contract of
27 employment states that he is employed to undertake transporting services across
28 each of these jurisdictions.

29 Paul routinely receives instructions from each of the depots he stops at in the
30 ACT, NSW and QLD and receives ad hoc instructions via radio while in transit.

31 For s (3) (b), Paul is not usually based in any single Territory or State.
32 As s (3) (b) does not decide Paul's Territory or State of connection, s (3) (c) needs
33 to be considered.

1 (6B) In deciding where the employer's principle place of business in
2 Australia is located regard must be had to the following:

3 (a) the place where the employer conducts the main part or
4 majority of its business;

5 (b) the address registered on the Australian Business Register in
6 connection with the employer's ABN;

7 (c) if the employer is not registered for an ABN—the Territory or
8 State registered by ASIC as the jurisdiction in which the
9 employer's business or trade is carried out;

10 (d) if the employer is not registered for an ABN or with ASIC—
11 the employer's business mailing address.

12 **6 Section 36B (8), new definitions**

13 *insert*

14 *ABN*—see the *A New Tax System (Australian Business Number)*
15 *Act 1999* (Cwlth), section 41.

16 *ASIC* means the Australian Securities and Investments Commission
17 under the *Australian Securities and Investments Commission*
18 *Act 2001* (Cwlth).

19 *Australian Business Register*—see the *A New Tax System*
20 *(Australian Business Number) Act 1999* (Cwlth), section 41.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 25 September 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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